No. 14,879

IN THE

United States Court of Appeals

For the Ninth Circuit

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, as Executor for the Last Will and Testament of THOMAS McDONOUGH, Deceased,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

On Appeal from the Judgment of the United States District Court for the Northern District of California.

BRIEF FOR THE APPELLEE.

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BRIEF FOR THE APPELLEE.

OPINION BELOW.

The opinion of the District Court (R. 71-74) is reported at 130 F. Supp. 923.

JURISDICTION.

A claim for refund of estate tax, which was assessed against, and paid by, the appellant as executor of the estate of Thomas McDonough, was filed on April

21, 1952, and was denied by the Commissioner of Internal Revenue on March 3, 1953. (R. 75-76.) Thereafter, on May 8, 1953, within the time provided in Section 3772 of the Internal Revenue Code of 1939 a complaint based on such claim was filed by the appellant herein in the District Court for the Northern District of California pursuant to jurisdiction conferred by Section 1346 of 28 U.S.C. (R. 19.) The case was tried before the District Court and judgment was entered on June 20, 1955. (R. 79-80.) Within sixty days, the notice of appeal to this Court was filed on August 15, 1955. (R. 80.) Jurisdiction is conferred on this Court by 28 U.S.C., Section 1291.

QUESTION PRESENTED.

Whether the District Court correctly held that the deduction allowable under Section 812 (c) of the Internal Revenue Code of 1939 for property previously taxed in the prior decedent's estate should equal the net amount received from that estate, and that consequently such deduction should be computed by eliminating amounts paid out of the decedent's estate for taxes and other charges against the prior decedent's estate.

STATUTE INVOLVED.

The pertinent provisions of the statute involved are set forth in the Appendix, *infra*.

STATEMENT.

The facts as found by the District Court are as follows (R. 3-5, 75-78):

This is a suit to recover estate tax in the amount of $40,249.05,[1] and was instituted by the Bank of America National Trust and Savings Association (appellant here) as executor of the estate of Thomas McDonough who died in San Francisco, California, on September 13, 1948. The executor filed an estate tax return with the Collector of Internal Revenue for the estate of such decedent on November 21, 1949, and at that time paid $160,651.22, which was the amount of tax reported thereon. (R. 3-4, 75.)

On October 29, 1951, the Commissioner of Internal Revenue notified the executor that there was a deficiency in estate tax in the gross amount of $26,173.64 or (after allowing a credit for the California inheritance tax) a net amount of $8,516.75. This net amount was paid by the executor with interest on January 3, 1952. (R. 4-5, 75.)

The decedent's brother, Peter P. McDonough, died in San Francisco, California, on July 8, 1947, and at the time of his death owned certain property jointly with his brother Thomas. At Peter's death such jointly owned property passed by operation of California law to Thomas. But it is admitted that by virtue of Section 811 of the 1939 Internal Revenue

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[1]It will be noted that in its claim for refund taxpayer claimed that it was entitled to a refund of $57,191.48. (R. 14.) But due to a recomputation attached to its complaint and marked Exhibit B (R. 18-19) taxpayer reduced the sum to $40,249.05.

Code, Peter's gross estate subject to federal estate tax included one-half of the property held in joint tenancy. Consequently, when the executor here (being administrator of Peter's estate) filed an estate tax return for Peter's estate, it included one-half of the value of the jointly owned property held by the two brothers. Upon final audit by the Commissioner the value of Peter's one-half interest was determined to be $577,971.92 and the executor here, as administrator of Peter's estate, acquiesced in such valuation. (R. 5-6, 75-76.)

The allowable deductions from Peter's gross estate amounted to $27,093.53 and the total federal estate tax assessed against Peter's estate was $149,289.84. The state inheritance tax attributable to such estate amounted to $49,263.81 and there were net specific legacies to others than Thomas in the amount of $39,116.47. The net value of the jointly owned property to which Thomas succeeded by virtue of Peter's death was $373,910.01. Such figure was the result of subtracting the figures listed in this paragraph from Peter's gross estate of $638,673.66. (R. 76.)

When Thomas McDonough died on September 13, 1948, the administration of his brother's estate had not been completed and on that date all of the jointly owned property included in Peter's estate was identifiable in that of Thomas' except for one item of the net value of $15.23. Thus the net adjusted value of the jointly owned property which had been included in the prior estate and which was also included in Thomas' estate was $373,894.78. (R. 76-77.)

Although all but that small item of the jointly owned property was identifiable at Thomas' death, such property was subject to a lien for $141,686.05, which was the portion of the federal estate tax on Peter's estate attributable to the jointly owned property. That figure was approved and used by the executor in preparing the estate tax return to be filed on behalf of Thomas' estate. Thus the net amount of Peter's portion of the jointly owned property (i.e., the amount to be included in Thomas' estate) was determined by the executor to be the value of such property at Thomas' death minus the amount of $141,686.05 or $444,033.18. But the District Court, sustaining the Commissioner's determination, found that the net value of such property was $373,894.78. (R. 77-78.)

The District Court concluded as a matter of law that, in computing the estate tax liability of the estate of Thomas McDonough, the Commissioner had properly determined the deduction allowed by the law for property previously taxed to be its net value, and that the executor was not entitled to recover. (R. 78.)

SUMMARY OF ARGUMENT.

The sole issue here is whether, in computing the deduction allowable for property previously taxed in the estate of the decedent's brother, amounts paid out of the decedent's estate for estate taxes and other charges against the brother's estate should be subtracted from the value of the property received. The

District Court held that such amounts should be subtracted.

This case arises under Section 812 (c) of the 1939 Internal Revenue Code which allows a deduction from a decedent's estate for property which has formed a part of the estate of a prior decedent dying within the past five years and which has not only been received from the prior decedent by bequest, devise or inheritance but can also be identified as a part of the decedent's estate. (Appellant asserts that this section should be interpreted in such a way as to permit a deduction for the entire value of the property (i.e., as included in the prior decedent's estate), without reduction for debts and claims to which the property is subject. But this contention ignores important facts here and does not give due emphasis to the provision that the deduction is to be limited to an amount equal to the value of the property actually received by inheritance.

The facts here show that the decedent received upon his brother's death the latter's share of their jointly owned property, but such property came to the decedent burdened with tax liens and other charges which were paid out of decedent's estate. Thus the net amount was all that the decedent received by inheritance, i.e., the amount by which the value of the property (as included in the brother's estate) exceeded the amount of the taxes and other charges paid by the decedent's executors out of his estate. This conclusion is not only a fair interpretation of the statute but is in accord with the applicable decisions.

ARGUMENT.

THE DISTRICT COURT CORRECTLY HELD THAT THE AMOUNT OF THE DEDUCTION CLAIMED HERE FOR PROPERTY PREVIOUSLY TAXED SHOULD BE LIMITED TO THE NET VALUE OF THE PROPERTY RECEIVED FROM THE PRIOR DECEDENT'S ESTATE.

The only issue in this case relates to the proper amount to be allowed under Section 812 (c) of the 1939 Internal Revenue Code (Appendix, *infra*) as a deduction from the gross estate of Thomas McDonough for property previously taxed in the estate of his brother Peter.

When Peter McDonough died on July 8, 1947, his one-half interest in the property held in joint tenancy with his brother Thomas vested in the latter and was valued, for the purpose of determining Peter's gross estate, at $577,971.92. Before the administration of Peter's estate was completed, Thomas died on September 13, 1948, and the estate taxes as well as certain other charges, were paid out of the assets in Thomas' estate. Subsequently, in computing the tax on Thomas' estate, appellant, as executor, claimed the right to deduct $577,971.92 as the value of property previously taxed in Peter's estate. The Commissioner did not agree but held that the amount allowable for property previously taxed was $373,894.78. Such figure was obtained by subtracting from Peter's gross estate ($638,673.66) the following items: $27,093.53 for deductions claimed and allowed in computing Peter's net estate; $149,289.84 for federal estate tax on Peter's estate; $49,263.81 for California inheritance tax on the same estate; and $39,116.47 for net

specific legacies to others than Thomas McDonough. (R. 65.)[2] The District Court adopted (R. 71, 77) the Commissioner's determination and we submit that its decision is correct.

Code Section 812 (c) provides that, in computing the net estate of a decedent, a deduction shall be allowed in an amount equal to the value of the property forming a part of the gross estate of a person who has died within the past five years. The allowance of this deduction is made subject to a number of conditions and limitations. These include the requirement that such property be identified as having been received by the decedent from the prior decedent by gift, bequest, devise or inheritance.[3] It is also necessary to show that an estate tax was finally determined and paid by or on behalf of the prior decedent's estate. Section 812 (c) further provides that the deduction shall be allowed only in the amount finally determined as the value of such property in determining the gross estate of the prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate.

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[2]To get the figure determined by the Commissioner, $15.23 should also be subtracted from the gross amount of $638,673.66. As the District Court explained (R. 77) this is a necessary adjustment because of a failure to identify a small item as property previously taxed.

[3]Appellant admits that although the property involved here vested in Thomas McDonough by operation of law and not under Peter's will the former took by inheritance. As we shall point out, we agree but only to the extent that the value of such property exceeds the charges against Peter's estate which were paid out of Thomas' estate.

In applying Section 812 (c) to this case, appellant emphasizes the last provisions we have just referred to, and asserts that, since the property comprising Peter's share of the jointly owned property was identifiable (with one minor exception) in Thomas' estate, the amount of the deduction should be the entire value given to such property in determining Peter's gross estate. We cannot agree because such contention not only ignores important facts involved here but also fails to give due emphasis to the provision in the above section that a deduction for property previously taxed must be limited to property received from the prior estate "by gift, bequest, devise, or inheritance". Of course, as we have pointed out in footnote 3, *supra,* appellant takes the position that the property came to Thomas by inheritance, but in doing so does not recognize that all that Thomas received by inheritance was the net amount determined by the Commissioner and the District Court.

In many cases the problem here does not arise because ordinarily the estate tax is paid out of the prior decedent's estate and legacies are then distributed. Thus the typical case may be said to be one in which A leaves a gross estate of $600,000 with estate tax and other charges against it in the amount of $200,000. The estate tax and other charges are paid out of such estate and the remaining property is distributed to B, to whom it goes by inheritance. If B dies within five years it is obvious that the deduction on account of property previously taxed in A's estate is $400,000. But the situation is not mate-

rially different if we take the same facts except that before the taxes and other charges against A's estate are paid all of the property in that estate is distributed to B and, after B's death, the taxes and other charges against A's estate are paid out of B's estate. We submit that in the latter case the deduction for property previously taxed should also be only $400,000.

Our second illustration is similar to the facts here. Thus, while Thomas received property which was valued in his brother's estate at $577,971.92, and that property was still in Thomas' estate at his death, such property came to him burdened with liens[4] and other charges which in effect brought the actual value of what he received down to that determined by the Commissioner. There can be no doubt about this for, as we have already pointed out, Peter's gross estate was valued at $638,673.66 and taxes, specific legacies and other charges against such estate amounted to $264,763.65. (R. 65.) Obviously, when such charges are subtracted from the gross estate, the value of what was left for Thomas (with the minor adjustment indicated above) was $373,894.78.

In other words, it is apparent from the figures given above that Peter's gross estate exceeded the

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[4]Section 827 of the Code (Appendix, *infra*) imposes a lien upon the gross estate of a decedent for ten years. That lien attached to Peter's estate, and the property which Thomas received was subject to such lien. A similar situation existed as to the California inheritance tax, and it is understood that appellant agreed to and did pay that portion of the specific legacies which could not be paid because of the lack of funds out of Peter's gross estate, i.e., out of the portion not included in Peter's share of the jointly owned property.

value placed on his share of the jointly owned property by only $60,701.74, and such sum was not sufficient to pay all of the debts. Thus the remaining taxes and charges amounting to $204,061.91 would normally have been paid out of what was left in Peter's estate, namely, his share of the jointly owned property, and had that been done before Thomas' death there could have been no question here that what Thomas received by inheritance from Peter amounted to only $373,894.78. But the administration of Peter's estate had not been completed when Thomas died, and Thomas and the appellant apparently thought it was advantageous to keep Peter's share of the jointly owned property intact in Thomas' estate. At any rate, the property was retained and the appellant decided to pay the taxes and other charges against Peter's estate out of Thomas' estate. But, by so doing, the appellant did not enlarge the actual amount of property previously taxed which was received by Thomas by inheritance.

In attempting to sustain its contention, appellant calls attention to one statement by the Commissioner (R. 65) in which the figure $373,894.78 is referred to as a "Theoretical balance" of property previously taxed. We are of the opinion that the more accurate description is that such figure represents the actual value of what Thomas received by gift or inheritance from his brother; and it is the figure which the Commissioner actually allowed. (R. 63, 71.) Certainly, regardless of how such figure is described, it is the proper one to use as a basis for the claimed deduction

and in making the remaining computations, including the reductions which are authorized by Section 812 (c) and which will necessarily follow after the issue here is decided but which, as appellant points out (Br. 5), are not involved in this case.

Under facts similar to those here the courts have held that the deduction for previously taxed property is limited to the net amount received, i.e., the amount of the bequest or gift after payment of all debts and other charges thereon, including federal estate taxes. See *Bloedorn v. United States,* 116 F. Supp. 132 (C. Cls.); *Central Hanover B. & T. Co. v. Commissioner,* 159 F. 2d 167 (C.A. 2d); *Bahr v. Commissioner,* 119 F. 2d 371 (C.A. 5th), certiorari denied, 314 U.S. 650; *McCarthy v. Delaney,* 76 F. Supp. 471 (Mass.); and *Estate of Ackley v. Commissioner,* 23 T.C. 639. Also cf. *Ransbottom's Estate v. Commissioner,* 148 F. 2d 280 (C.A. 6th).

In the *Central Hanover* case, *supra,* assets were distributed to a widow, as the sole legatee of her husband, before payment of the latter's debts and these were subsequently paid by the widow. At the widow's death within five years there was a large amount of property identifiable as having been received from the husband's estate. The executor claimed the right to deduct the entire value of such property, (as determined for the husband's estate) as property previously taxed, but the Commissioner determined that the widow had received only 63⅓ per cent of each asset by bequest and thus limited the deduction ac-

cordingly. In upholding this determination, the Court of Appeals said (p. 168):

> The question is whether by "identity" the statute means the physical identity of the asset, or the identity of the legatee's financial interest in it. The Tax Court held that the debts were in effect liens or charges upon all the husband's assets, to be ratably allocated, and that he bequeathed and could bequeath to his wife only an interest in each asset measured by its value less its proportion of the debts as a whole. * * *
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> It seems to us that this is the proper interpretation of the section. It is of no consequence whether the debts were liens in a formal sense upon the husband's assets, it is enough that, if the wife did not pay them, the creditors could follow them and sell them on execution. The record is not clear, but apparently she used her own funds to pay the debts, and by so doing she acquired the creditors' interest which she had not had before, and which had never been bequeathed to her. On the other hand, if she sold some of the assets to pay the debts, the situation was the same: she parted with her bequeathed interest in those she sold and used the proceeds to secure the creditors' interest in the rest. We cannot see why either situation was different from an executor's sale of, or a creditor's levy upon, an asset before distribution was made.

Another excellent statement appears in the *Bloedorn* case, *supra,* in which a widow was also the sole legatee of her husband and paid the estate tax on his estate out of her own funds. She too died within

five years and owned at her death all of the property she had inherited from him. It was claimed there that the amount paid as estate tax by the widow should not be subtracted in computing the deduction for property previously taxed but the Court of Claims held otherwise, stating (p. 134):

> We think that the only thing that could have engaged the attention of Congress in enacting the legislation here in question was the net amount which the second decedent had received from the first decedent, which net amount, or its proceeds, remained in the estate of the second decedent when he died within five years after the death of the first decedent. The question whether the second decedent paid the tax out of his own funds * * * or out of the assets of the estate, would depend, apart from its effect upon the tax question, upon collateral circumstances. * * * If it seemed important not to sell the investments which the first decedent had, the heir would pay the tax out of his own liquid funds if he had such funds. * * *
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> * * * * * * *
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> We do not think that Congress had any intention of discriminating in favor of a well-financed heir, merely because he was so well-financed that he could not only pay out of his own funds the tax on the estate of the first decedent, but would not find it necessary, over a five-year period, to reimburse himself for the money so paid. * * * We think it would be unfair to the legislature to attribute to it an intention which could only be described as erratic.
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> * * * * * * *

> There is here no problem of double taxation except in a merely formal and unsubstantial sense. As much of net worth as accrued to Rose L. Sutherland and her estate from the estate of her husband, after deducting the taxes paid by her from her own funds in order to get title to the estate of her husband, has been allowed as a deduction from her gross estate, in computing its taxes.

The *Bahr* case, *supra,* also reached the same conclusion under similar facts. But in *Thomas v. Earnest,* 161 F. 2d 845, on which appellant relies here, the Fifth Circuit, although stating (p. 848) that it was following the majority opinion in the *Bahr* case, modified its former ruling by holding that the federal estate tax should not be deducted in computing the deduction for property previously taxed. However, it should be noted that the Fifth Circuit was still of the opinion that the prior decedent's gross estate should be reduced by debts, expenses, and state inheritance taxes in determining the amount of property previously taxed.

Another case which appellant relies on is *Commissioner v. Garland,* 136 F. 2d 82 (C.A. 1st), but there are some distinguishing facts in that case. There too the widow was the decedent and her husband was the prior decedent. The debts, taxes and expenses of the prior decedent's estate amounted to approximately $100,000 of which about $51,000 was paid out of the corpus of his estate and another $35,000 was paid out of income and capital gains

realized by his estate while still in the process of administration. The remaining property was then distributed to the widow and at her death the remainder of the debts against her husband's estate (i.e., $14,000) remained unpaid. The executor for the widow's estate conceded that, to the extent of the $14,000 debt, the property distributed to her had not been received by bequest, devise or inheritance. The reason for such concession is stated in *Estate of Garland v. Commissioner,* 46 B.T.A. 1243, 1246, as being that "the decedent in effect was required to return that amount of the assets of the prior decedent's estate after they had been distributed to her". The First Circuit, in commenting on such concession, admitted (p. 84) that the Board of Tax Appeals may have been correct in its conclusion as to the reason just given but explained that it was not required to pass upon the propriety of the executor's concession. Thus it is clear that the only question presented in the *Garland* case was whether the deduction for property previously taxed should be reduced by the $35,000 which the widow had disbursed from the income of her husband's estate in payment of his debts. That question was decided in the executor's favor by the Tax Court, whose decision was affirmed on appeal. Were the question to arise again, its decision would undoubtedly be different. See *Estate of Ackley v. Commissioner, supra,* p. 645.

In support of the position taken here, see also The Estate Tax Deduction For Property Previously Taxed, by Henry J. Rudick, 53 Col. L. Rev. 761, in

which that well known commentator on federal tax law asserts that the object of the statutory provision involved here is accomplished (i.e., prevention of a double tax on the same property) if the second estate is limited in its deduction to what would have qualified for the property previously taxed deduction had the prior estate completely discharged its obligations out of the original corpus of the estate and then turned over what was left to the legatee. That, Mr. Rudick asserts, is all the legatee can claim as having been received by way of bequest or inheritance and anything received beyond that is from other sources. This is essentially the rationale of the *Central Hanover, Bahr, Bloedorn,* and *Ackley* decisions, *supra.* The opinions in those cases furnish a complete answer to appellant's argument.[5]

In commenting on the cases on which we rely, appellant refers to their failure to discuss the provision in Section 812 (c) relating to mortgages or similar liens which attach to property of a prior decedent before his death. Moreover, it ignores the applicable

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[5]In lieu of the deduction allowed by 1939 Code Section 812(c) for property previously taxed, Section 2013 of the Internal Revenue Code of 1954 allows a credit measured by the amount of estate tax paid with respect to property received from the prior decedent. Significantly, with reference to the replaced provision (1939 Code Section 812 (c)), the House Committee Report stated (H. Rep. No. 1337, 83d Cong., 2d Sess., p. 89):

> Present law allows a deduction for property received from a prior decedent (or by gift subject to tax) within 5 years of the current decedent's death * * *. *The deduction is reduced if the property is subject to a debt or claim* and no deduction is allowable if the property was received from the current decedent's spouse. [Italics supplied.]

Treasury regulation (Sec. 81.41 of Treasury Regulations 105, promulgated under the Internal Revenue Code of 1939) and quotes the regulation applicable to deductions allowable under Section 812(b)(4) for unpaid mortgages. (Br. 17-18, 22-23.) We do not think it necessary to discuss these provisions, for obviously the liens and other charges involved here all arose subsequent to Peter's death, with the exception of some items included in deductions in the total amount of $27,093.53 (R. 65) about which appellant has raised no question.

Moreover, it should be clear that Peter's estate and inheritance taxes, as well as the specific legacies to others than his brother Thomas, cannot be taken as deductions on Thomas' estate tax return under Code Section 812(b) (Appendix, *infra*), as appellant seems to assume. (Br. 17.) Such items, as we have pointed out, were all debts of Peter's estate. Furthermore, as the issue raised in appellant's claim for refund (R. 13-15) is confined to the issue discussed herein, and as appellant admits (Br. 5) that the "sole issue" here relates to the initial evaluation of the deduction for property previously taxed, we submit that no question can properly be considered here as to the deductions which might have been taken on Thomas' estate tax returns under Section 812(b).

CONCLUSION.

The decision of the District Court is correct and should be affirmed.

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February, 1956.

(Appendix Follows.)

Appendix.

Appendix

Internal Revenue Code of 1939:

SEC. 811. GROSS ESTATE.

The value of the gross estate of the decedent, shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

(a) *Decedent's Interest.*—To the extent of the interest therein of the decedent at the time of his death;

* * * * * * *

(e) *Joint Interests.*—To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided,* That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be

excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: * * *

* * * * * * *

(26 U.S.C. 1952 ed., Sec. 811.)

SEC. 812. NET ESTATE.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

(a) *Exemption.*—An exemption of $100,000;

(b) *Expenses, Losses, Indebtedness, and Taxes.*—Such amounts—

(1) for funeral expenses,

(2) for administration expenses,

(3) for claims against the estate,

(4) for unpaid mortgages upon, or any indebtedness in respect to, property where the value of decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, and as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes. * * *

* * * * * * *

(c) [as amended by Secs. 405(b) and 407(a)(1) and (2) of the Revenue Act of 1942, c. 619, 56 Stat. 798, and Sec. 362 of the Revenue Act of 1948, c. 168, 62 Stat. 110] *Property Previously Taxed.*—An amount equal to the value of any property (1) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (2) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. Property includible in the gross estate of the prior decedent under section 811 (f) and property included in total gifts of the donor under section 1000(c) received by the decedent described in this subsection shall, for the purposes of this subsection, be considered a bequest of such prior decedent or gift of such donor. This deduction shall be allowed only where a gift tax imposed under Chapter 4, or under Title III of the Revenue Act of 1932, 47 Stat. 245, or an estate tax imposed under this chapter or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the

decedent's gross estate, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this subsection, section 861(a)(2), or the corresponding provisions of any prior Act of Congress, in respect of the property or property given in exchange therefor.

The following property shall not, for the purposes of this subsection, be considered as property with respect to which a deduction may be allowed: (A) property received from a prior decedent who died after December 31, 1947, and was at the time of such death the decedent's spouse, (B) property received by gift after the date of the enactment of the Revenue Act of 1948 from a donor who at the time of the gift was the decedent's spouse and (C) property acquired in exchange for property described in clause (A) or (B).

Where, under the provisions of Section 1000(f), a gift received by the decedent was considered as made one-half by the donor and one-half by the donor's spouse, one-half of the gift shall be considered as received by the decedent from each such spouse.

Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this subsection shall be reduced by the amount so paid. The deduction under this subsection shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under subsections (a), (d), and (e) and the amounts

of general claims allowed as deductions under subsection (b) as the amount otherwise deductible under this subsection bears to property subject to general claims. If the property includible in the gross estate to which the deduction under this subsection is attributable is not wholly property subject to general claims—

(1) before the application of the preceding sentence, the amount of the deduction under this subsection shall be reduced by that part of such amount as the value, at the time of the decedent's death, of such property (to which such deduction is attributable) subject to claims but not to general claims is of the value, at the time of the decedent's death, of such property, and

(2) in the application of the preceding sentence in reducing the balance, if any, of such deduction, "the amount otherwise deductible under this subsection" shall be only that part of such amount otherwise deductible (determined without regard to clause (1) of this paragraph) as the value, at the time of the decedent's death, of such property (to which such deduction is attributable) subject to general claims is of the value, at the time of the decedent's death, of such property.

For the purposes of the two preceding sentences and this sentence, "general claims" are the amounts allowed as deductions under subsection (b) which, under the applicable law, in the final adjustment and settlement of the estate may be enforced against any property subject to claims, as defined in subsection

(b), and "property subject to general claims" is the value, at the time of the decedent's death, of property subject to claims, as defined in subsection (b), reduced by the value, at the time of the decedent's death, of that part of such property against which amounts allowed as deductions under subsection (b) which are not general claims may be enforced, under the applicable law, in the final adjustment and settlement of the estate. Where the property referred to in this subsection consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

(d) *Transfers for Public, Charitable, and Religious uses.*—* * *

(e) [as added by Sec. 361 of the Revenue Act of 1948, *supra*] *Bequests, Etc., to Surviving Spouse.*—
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(26 U.S.C. 1952 ed., Sec. 812.)

SEC. 827. LIEN FOR TAX.

(a) *Upon Gross Estate.*—Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any

or all property of such estate from the lien herein imposed.

(b) [as amended by Sec. 411(a) of the Revenue Act of 1942, *supra*] *Liability of Transferee, Etc.*—If the tax herein imposed is not paid when due, then the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under section 811(b), (c), (d), (e), (f), or (g), to the extent of the value, at the time of the decedent's death, of such property shall be personally liable for such tax. Any part of such property sold by such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien provided in section 827 (a) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

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(26 U.S.C. 1952 ed., Sec. 827.)